

**U.S. CUSTOMS SERVICE
OFFICE OF STRATEGIC TRADE
REGULATORY AUDIT DIVISION**

**RESOLVING “GRAY AREAS”
OF HARMONIZED TARIFF SCHEDULE (HTS)
CLASSIFICATION AND
CLASSIFICATION REFERRAL PROCEDURES TO THE
NATIONAL IMPORT SPECIALIST**

INTRODUCTION

During the course of testing a company's import transactions in a Compliance Assessment (CA), technical issues regarding the correctness of certain “gray areas” of HTS classification sometimes arise. Customs has developed a resolution process where the CA import specialist (CA IS) may make a determination that the tariff classification of a particular product is a “gray area” and is not to be counted as an error in Customs risk assessment for a company. The resolution process also provides for the auditee to request a review of a particular classification determined by the CAT IS to the appropriate national import specialist (NIS).

BACKGROUND

Correct classification of imports has always been difficult. The increase in tariff rate lines, the explosion of imports and the variety of new products being imported complicates the classification of merchandise. Customs must identify the risk associated with importer errors when evaluating importer non-compliance. Customs, as well as the importer, is negatively impacted when costs to achieve compliance are out of proportion to the risks associated with non-compliance.

As part of a CA, the import specialist reviews a sample of the classifications imported by the auditee and the CAT computes a compliance rate that shows the percentage of classifications that are compliant with Customs laws and regulations. In some cases the classification used by the importer is a plausible alternative to the Customs classification determined to be correct by the CAT IS. The following procedures cover these “gray area” classifications, collection of unpaid duties in such cases, and provides for a referral for review to the NIS concerning the correct HTS classification.

PROCEDURES FOR RESOLUTION OF “GRAY AREA” CLASSIFICATIONS

When reviewing classifications that fall into a “gray area,” the CAT Import Specialist should

consider whether:

- ? Customs considers the classifications ambiguous and subject to varying interpretations, including the interpretation by the auditee.
- ? The auditee has a trained and knowledgeable staff that used a documented, reliable, and systematic approach to arrive at the entered HTS classification. Attributes of a reliable system are suggested by the questions in the “Reasonable Care Checklist” contained in Customs 1998 Informed Compliance Publication on Reasonable Care.

If the CAT IS applies the criteria discussed above and concludes that the interpretation by the company is a “gray area,” the classification will not be counted as an error for the compliance risk category determination. The correct classification, however, should be conveyed to the company to assure the appropriate classification is used in the future.

REVENUE OWED AS A RESULT OF GRAY AREA DETERMINATIONS

If the CAT IS determines an entered classification is a “gray area” and use of the correct classification would have resulted in additional revenue owed to Customs, the revenue should be collected only if the relevant entries are unliquidated.

REFERRAL PROCEDURES FOR RESOLVING CLASSIFICATION DIFFERENCES

If the auditee disagrees with the CAT IS on the correctness of a classification, the auditee or the compliance assessment team may refer the issue to the National Import Specialist (NIS) for a final determination on the correct classification. The auditee must request the CAT IS to refer the issue to the NIS within 30 days of being advised by the CAT IS of the classification difference(s).

To request a decision from the NIS for either the auditee or compliance assessment team, the CAT IS, in cooperation with the CAT leader, will submit documentation of Customs review along with company information. The NIS will review all the information provided and usually within 30 days, provide a decision on the correct classification.